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IN THE

Supreme Court of the United States

October Term, 1946

In the Matter of PITTSBURGH RAILWAYS COMPANY, Debtor

NO. 360

PHILADELPHIA COMPANY, Petitioner

v.

CITY OF PITTSBURGH

NO. 363

MONONGAHELA STREET RAILWAY COMPANY and PITTSBURGH AND BIRMINGHAM TRACTION COMPANY, Petitioners

v.

CITY OF PITTSBURGH

BRIEF OF CITY OF PITTSBURGH IN OPPOSITION TO PETITIONS FOR CERTIORARI

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COUNTER-STATEMENT OF QUESTION INVOLVED

The street railway system in the Pittsburgh area has been operated by the Debtor as a physical and economic unit since 1902, in disregard of the corporate entities of 49 underlier corporations. The original properties of the Debtor and the underliers have been inextricably commingled and firmly welded into a single metropolitan street railway system, with the acquiescence of the underliers, and have been almost entirely renewed or replaced by the Debtor. No underlier or group of underliers is now able to operate separately, and in any event separate operation is contrary to the public interest. Most of the underliers are subsidiaries or affiliates of the Debtor; all of them are insolvent except a few non-affiliates which have been receiving rentals from the guarantor of their 900-year leases. The entire system has been in the custody of the reorganization court since May, 1938; unitary operation has been continued by Trustees of the Debtor.

The question involved is:

For the purpose of a system-wide reorganization, to which there is no practical alternative, does the court have jurisdiction over the properties of the underliers?

The Circuit Court below, reversing the District Court, held that the reorganization court does have such jurisdiction.

COUNTER-STATEMENT OF THE CASE

The statements of the case in the petitions for certiorari (Philadelphia Co. pet. pp. 5-16, Monongahela pet. pp. 2-7)[1] omit the extraordinary facts which moved the Circuit Court of Appeals below to conclude that "the facts of the present case call for the treatment of this great transportation system as one entity for purposes of reorganization, regardless of the elaborate jig-saw puzzle arrangement of all the underlying companies which have gone into it" (R. 951).

The facts are exceedingly complex and extensive,[2] and no attempt will be made to relate them in full. But as they are of controlling importance, the major facts will briefly be summarized.

The Debtor's Street Railway System

The great bulk of urban mass transportation in the

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[1] Refers respectively to separate petitions for certiorari filed at Nos. 359-361 by Philadelphia Company and at Nos. 362-364 by Monongahela Street Railway and other underlier companies, referred to herein as "Guaranteed Underliers".

[2] The record, of which only portions have been printed, consists of over 3,500 pages of testimony and 185 exhibits, in addition to the Amended Revised Plan (R. 541-603), hereinafter referred to as "the Plan", and the report of the Special Master (R. 604-838), hereinafter referred to by paragraph number as "SMR ¶ ——". Selected excerpts from the record appear in the City's appendix filed with the court below and included as a part of the Transcript of Record here, at R. 1a-540a.

Pittsburgh area is furnished by the Debtor's street railway system. Operations are conducted over approximately 500 miles of track, of which about 300 miles lie within the municipal limits of the City of Pittsburgh. The system serves the city and 85 surrounding municipalities, having an aggregate population of 1,173,000. In 1943, at the time of the hearings before the Special Master, 1,081 passenger cars were in use, operated over 82 routes. During the twelve months ending November 1, 1942 the system carried over 237,000,000 passengers and operations aggregated almost 35,000,000 miles of service. Gross revenues for 1942 totalled nearly $16,750,000. System operations are performed by about 3,000 employees.

All of the street railway companies in Pittsburgh and its environs were unified in 1902, since which date their franchises and properties have been operated by the Debtor as a unit. The method of unification, however, was by lease, operating agreement or stock purchase rather than by formal corporate merger (see table at R. 650-651); hence there are still alive 49 underlier corporations, whose only business since 1902 has been the receipt of rents and the distribution of dividends (cf. SMR ¶ 847, R. 798). Of these, 36 are controlled through stock ownership and interlocking officers and directors, by Philadelphia Company, parent of the Debtor and petitioner herein at No. 360; for convenience these 36 are designated "Philadelphia Underliers". Nine underliers are not affiliated with the Debtor or with Philadelphia Company and are in the fortunate position of having had their 900-year leases guaranteed by Philadelphia Company. These 9, designated "Guaranteed Underliers", have been receiving $500,000 per year in lease rentals from Philadelphia Company as guarantor and are

therefore, unlike all of the remaining underliers, not insolvent. They are the petitioners herein at No. 363. Like the 9 Guaranteed Underliers, the remaining 4 underliers, designated "Unguaranteed Underliers", are not affiliated with the Debtor or with Philadelphia Company, but they have no guaranty of their long-term leases. Significantly, although their former lines are at least as important to the system as are those of the Guaranteed Underliers, the Unguaranteed Underliers have joined in the City's petition (R. 99a-101a).

Unitary operations since 1902 have been in complete disregard of the existence of the underliers (SMR ¶ 248, R. 674). Combination routes which crossed earlier franchise limits were inaugurated; the fare was made uniform system-wide, with free transfer privileges; the entire power supply was changed; car houses, substations and repair shops were razed; connecting track was constructed and numerous sections of track abandoned; the loops followed in the congested downtown area were altered completely, in some cases to conform with one-way-street or other traffic requirements. In brief, for almost half a century the Debtor has dealt with the Underliers' properties as its own, disposing of some, discontinuing the use of others, adding still others, and integrating the parts into an operating whole. The cars, tracks, franchises, power stations, car houses, repair shops, electrical facilities and miscellaneous equipment of the 50 corporations have been thoroughly commingled, and what was once a group of independent regional lines has become a single transportation system serving a large community. All this was done without complaint from any underlier (cf. R. 92a-97a).

A bird's-eye view of the unexampled confusion of the system's assets is afforded by Exhibit 9, a large colored map showing the franchise locations of each underlier.[3] The map shows how the routes on which present operations are based,[4] by utilizing the franchises of numerous underliers, have utterly disregarded the underliers' corporate lines (R. 236a). With a few insignificant exceptions (SMR ¶¶ 713, 714, R. 771), each route, determined exclusively by the public convenience (R. 234a), uses the lines of 3 to 13 underliers (see Exhibit 39A, reproduced at R. 540a). Twenty of the routes operate over the lines originally franchised to 8 or more underliers. Five operate over 10 underlier franchises, 3 over 12, and one over 13. One route uses 30 segments of track franchised to 10 companies (SMR ¶ 723, R. 772).[5]

The underliers, ostensibly public service companies, thus do not have franchises to operable lines (cf. SMR ¶¶ 719, 720, 721, R. 772). They have also voluntarily submitted to being stripped of the facilities for furnishing street railway service. Of the nearly 1300 cars they owned when unified operations began in 1902, only 32 remain, none of

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[3] A copy of this key map will be supplied with this brief to each Justice.

[4] The terminus of each route is indicated on the map by the route number in a circle. The sub-map shows the loops followed by each route in the downtown area (the "Golden Triangle").

[5] This Court, in a previous case involving the Debtor, commented on the fact that the underliers' properties had been welded into one system "in such fashion that a single route or a single passenger ride may involve the use of a number of the underlying companies' properties." *Philadelphia Co. v. Dipple*, 312 U. S. 168, 174, 61 S. Ct. 538 (1941).

them used in passenger service (SMR ¶ 514, R. 629). All of the system's present 1000-odd street cars belong to the debtor (SMR ¶ 633, R. 654), for when new cars were acquired the Debtor never assigned any to individual underliers notwithstanding lease provisions for maintenance or ultimate replacement in kind (SMR ¶ 1006, R. 807-808), nor did the underliers demand that this be done (R. 187a, 524a-525a, 537a).[6] Power generating stations owned by the underliers were disposed of, and no underlier now has any generating station (SMR ¶ 512, R. 727). Since 1926 the system has had but one repair shop, the numerous shops of the underliers having been abandoned (SMR ¶ 243, R. 672). Twenty or more car houses which belonged to underliers have been razed or sold (R. 284a; SMR ¶ 513, R. 728). Miscellaneous equipment—horses, wagons, oil and grease, stationery, furniture, tools, supplies, repair parts and materials—have, of course, long since been used up or scrapped (cf. SMR ¶¶ 661, 834, 848, R. 657, 795, 798). Even the tracks, poles and wires in existence in 1902 have been worn out in use, abandoned, or otherwise disposed of, and none of such original physical property can be found today (R. 508a-512a).

No attempt was made to show that separate operation by any individual underlier, even if it were able to acquire the necessary property, is now possible. Philadelphia Company, however, introduced an elaborate case to establish the possibility of breaking the system up into three separate sub-"systems". The Special Master found that such sep-

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[6] Indeed, neither the Debtor nor any of the underliers has kept current records of the underliers' physical properties (R. 471a; SMR ¶¶ 836, 859, 873, 895, 898, R. 795, 800, 803, 804, 805).

arate operation, although theoretically possible, was not practicable (SMR ¶¶ 753, 774, R. 778, 781) and was not only contrary to the public interest but also detrimental to the private interests of many and perhaps all of the security holders of the underliers (SMR ¶ 775, R. 781).

Financial Description of the System

The confusion of the physical assets of the 50 corporations is more than matched by the complexity of the system's corporate and capital structures.

Most of the underliers are linked to the Debtor through a chain of leases and other contracts with one or more intermediate companies (see chart, R. 538a, and table, R. 650-651). The properties of one Guaranteed Underlier are incorporated into the system through no less than five instruments between intermediate transferees (SMR ¶ 71 (4), R. 636). Only 7 of the 49 underliers have leases to or operating agreements with the Debtor directly (SMR ¶ 161, R. 653).

Parent-subsidiary relations, too, are in the main indirect (see table, R. 650-651). Several Philadelphia Underliers are third-degree subsidiaries of the Debtor or an affiliate (Consolidated) and fourth-degree subsidiaries of Philadelphia Company. Most of them are either subsidiaries or affiliates of the Debtor in the second degree.

The system's financial structure, shown on Exhibit 8 (R. 539a), is even more incongruous. There are outstanding no less than 59 issues of bonds, many of them past due, some of them issued by corporations now defunct. There

are in addition 57 issues of common and preferred stocks; 1 issue of serial notes; and numerous demand notes.

The system's capitalization is fantastically high. The total face amount of all securities outstanding is almost $152,000,000 (Ex. 8, R. 529a), which contrasts glaringly with the total capitalization of $30,000,000 for the reorganized company as set forth in the Plan approved by the Pennsylvania Public Utility Commission.[7] The system's fixed charges total almost $3,500,000 (Ex. C of Plan, R. 589), exclusive of underlier taxes, and are thus over ten times the $300,000 of annual fixed charges provided for in the Plan (R. 562).

The system has been in financial distress almost continuously since its inception in 1902; except for a few years, it has been incapable of carrying its crushing burden of fixed charges (see SMR ¶ 391, R. 701). Two previous attempts to alleviate the system's financial troubles failed completely. The first was a private intercompany arrangement in 1913 (SMR ¶¶ 405-416, R. 704-706) and the second was an equity receivership which lasted from 1918 to 1924 (SMR ¶¶ 451-471, R. 712-719). Both were engineered by Philadelphia Company (SMR ¶¶ 406, 469, R. 704, 718) and neither resulted in any reduction of the system's intolerably excessive fixed charges.

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[7] *Re W. D. George, et al., Trustees of Pittsburgh Railways Company*, 42 P. U. R. (NS) 285 (1942). The plan of reorganization had been submitted to the Pa. P. U. C. under Sec. 178 of Chapter X, 11 U. S. C. Sec. 578.

Counter-Statement of the Case

Nature of the Proceeding

In recognition of the futility of limiting the reorganization to the properties of the Debtor alone[8] the original Plan and its two revisions proposed a system-wide reorganization. Separate reorganization proceedings for the underliers were contemplated, however, as the Trustees were led to believe that the underliers would coöperate to effectuate the Plan (R. 549). But four and one-half years after the reorganization began, when the Amended Revised Plan had been approved by the Pennsylvania Public Utility Commission and plan hearings were the next order of business, objections were raised, and the Trustees' efforts to secure the underliers' voluntary participation failed (R. 37a-38a). In order to break the deadlock which threatened to defeat the reorganization, the City of Pittsburgh filed the petition which forms the subject matter of the present proceeding.

The City's petition (R. 40a-83a) prayed that the court exercise jurisdiction over the underliers' properties in its custody and, as part of plan hearings, determine the rights and interests of all the underliers' security holders as persons having claims against or interests in the Debtor or its properties (R. 75a).[9]

Extensive hearings on the petition were held before a Special Master, at which the evidence presented by the City was designed to show that the separate corporate

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[8] See Report of Trustees, R. 26a-40a, at 34a-35a.

[9] The alternative prayers of the petition (R. 76a) were abandoned (SMR ¶ 12, R. 614).

entities of the Debtor and the underliers had been ignored throughout the history of the unified enterprise; that the traction assets, much of which were originally owned by the individual underliers, had been so inextricably commingled and so fully renewed or replaced by the Debtor in the practical day-to-day operations of the unified transit system that it was impossible to determine what presently existing properties, if any, were owned by the underliers; and that, as a result, the system was an integral unit and separate operation by any underlier was, as a practical matter, impossible.[10] The City argued for the recognition as a matter of law of what was true as a matter of fact—that in taking into its custody the Debtor's entire system the court was assuming jurisdiction over all the properties and assets, or interests therein, of each of the underliers. The City contended, therefore, that such jurisdiction should be exercised for the purpose of the plan.

The City's petition was supported by the Securities and Exchange Commission, the Reorganization Trustee, the Unguaranteed Underliers, the Committee for Municipal Interests (representing numerous municipalities), the County of Allegheny, public security holders, banks having large holdings in underlier securities, an indenture trustee, the Tort Creditors Committee, and the Six Month Creditors (R. 205a-216a; SMR ¶¶ VII, XI, R. 611, 612).

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[10] Evidence was also introduced showing that Philadelphia Company, by means of its stock holdings and a virtually complete identity of officers and directors, dominated and controlled the Debtor and the 36 Philadelphia Underliers in the formation and expansion of the transit system and in the constituent companies' activities and accounting methods, treating the Philadelphia Underliers, with their full acquiescence, simply as divisions of the Debtor.

Opposition to the City's petition has come only from Philadelphia Company and the Guaranteed Underliers (petitioners herein, the former at No. 360, the latter at No. 363), and stems from a private controversy between them over lease guaranties. Philadelphia Company is attempting to extricate itself from its improvident undertaking as guarantor (SMR ¶ 491, R. 726). The Guaranteed Underliers quite naturally wish to preserve their "beautiful guarantee" (SMR ¶ 864, R. 802; see opinion of Circuit Court, R. 944).

The District Court adopted the recommendation of the Special Master that the City's petition be dismissed (R. 148a). The Circuit Court of Appeals reversed (R. 939-952), and the instant petitions for certiorari followed.

ARGUMENT

Certiorari should be denied because this Court does not grant certiorari to review evidence and discuss specific facts,[1] or to give the party defeated in the Court below another hearing in matters peculiar to a single controversy.[2]

This important case has turned upon the facts rather than upon the law, for the facts reveal a unique situation calling for the exercise of the Court's broad reorganization powers—powers which it clearly possesses but which it may rarely if ever again be called upon to exercise. The Circuit Court of Appeals below decided that the long-suffering people of Pittsburgh are entitled, without further delay, to a thoroughgoing reorganization of their mass transit system, and that the reorganization court has the power to effect it. Its decision is clearly right *under the facts of this case*. It is not in conflict with any other decision of its own or of any other Circuit Court, nor did it decide a question of Federal law which should be settled by this Court or in a way probably in conflict with the applicable decisions of this Court.[3]

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[1] Robertson and Kirkham, *Jurisdiction of the Supreme Court of the U. S.* (1936), sec. 303, citing *U. S. v. Johnson*, 268 U. S. 220, 45 S. Ct. 496, 69 L. Ed. 925 (1925); *So. Power Co. v. N. C. Public Service Co.*, 263 U. S. 508, 44 S. Ct. 164, 68 L. Ed. 413 (1924); *Crowell v. Benson*, 285 U. S. 22, 65, 52 S. Ct. 285, 76 L. Ed. 598 (1932).

[2] Ibid., citing *Magnum Import Co. v. Coty*, 262 U. S. 159, 163, 43 St. Ct. 531, 67 L. Ed. 922 (1923).

[3] Rule 38, ¶ 5 (b) of the Rules of this Court.

I.

THE DECISION OF THE CIRCUIT COURT BELOW RESTS UPON THE PECULIAR FACTS OF THE CASE

A system-wide reorganization must be accomplished in this proceeding because the compulsion of the extraordinary facts of the case makes any other solution unworthy of serious consideration (cf. R. 34a-35a). First, there are fifty corporations intertwined in a single enterprise. Secondly, the physical integration of the properties of the underlying corporations with each other's and with those of the Debtor (described *supra,* pp. 4-7) is unparalleled in the recorded cases. Moreover, each company's property is valueless to its stockholders and creditors except as an integral part of the Debtor's street railway system. Lastly, necessary public transportation service in one of the country's largest industrial centers can be continued only by a reorganization of the system as a unit. The petitioners have been unable to point to a single case on the question of reorganization jurisdiction which is even remotely analogous on the facts, and it is highly unlikely that another like it will ever arise.

It is apparent throughout the opinion of the Circuit Court of Appeals below that its decision upholding jurisdiction over the properties of the underliers was based upon the unprecedented combination of circumstances presented.

The court summed up as follows (R. 951-952):

> "Our conclusion is that the facts of the present case call for the treatment of this great transportation system as one entity for purposes of reorganization,

> • • • We think that the many years of factual unity and the public necessity for the measures which will insure the proper economic foundation for the system, override the arguments for the recognition of the legal concepts of separate entity on the part of the underliers."

There is certainly no need for this Court to reexamine the Circuit's Court's correct decision of this unique problem.

II.

THE EXERCISE OF JURISDICTION OVER THE UNDERLIERS' PROPERTIES IS CONSISTENT WITH PRIOR LAW

In the words of the Circuit Court of Appeals below, "the issue is whether the demands of the facts is to control or whether obeisance must be made to the doctrine of the separate corporate entity of all these concerns, which from the business point of view constitute one operation and one enterprise" (R. 947). The Circuit Court refused, in the circumstances of this case, to "make obeisance". Its decision, the City submits, does not overstep the statutory powers which the Congress granted to courts of reorganization, and is consistent with earlier decisions in the development of the law of bankruptcy reorganization.

A. Jurisdiction over the Properties of the Philadelphia Underliers and of the Unguaranteed Underliers Follows Established Precedent

As to the 36 Philadelphia Underliers, the Circuit Court found it unnecessary "to discuss those companies which have not followed ritual so closely in preserving their own separate character" (R. 952). However, the record contains overwhelming evidence showing that all of these underliers have been so fully and completely controlled by Philadelphia Company—through stock ownership (SMR ¶ 25, R. 617), interlocking officers and directors (SMR ¶¶ 389, 390, R. 700), interrelated books and accounts (SMR ¶¶ 218, 344, R. 668, 690), and dictation of corporate and financial actions (see SMR ¶ 1010, R. 809; also, SMR ¶¶ 93, 119-121, 157, 437-439, 487, 489, R. 639, 642, 648, 710, 724, 725)—that these underliers were simply divisions or departments of the Debtor in the street railway holdings of Philadelphia Company. Upon the conventional grounds for the disregard of separate corporate entities, the joint administration of the assets of the 36 Philadelphia Underliers with those of the Debtor in one proceeding is supported by ample judicial precedent. *Commerce Trust Co. v. Woodbury*, 77 F. 2d 478 (CCA 8, 1935); *Trustees System Co. of Pa. v. Payne*, 65 F. 2d 103 (CCA 3, 1933); *Stone v. Eacho*, 127 F. 2d 284 (CCA 4, 1942), cert. den. 317 U. S. 635, 63 S. Ct. 54; *Central Republic Bank & Trust Co. v. Caldwell*, 58 F. 2d 721 (CCA 8, 1932).

The Circuit Court also (R. 952) found it unnecessary to discuss the voluntary joinder of the 4 Unguaranteed Underliers (R. 206a-209a) which, standing alone, brings their properties within the court's jurisdiction. *Re Metropolitan Railway Receivership*, 208 U. S. 90, 111, 112, 28 S.

Ct. 219 (1909); cf. *Cline v. Kaplan*, 323 U. S. 97, 65 S. Ct. 155 (1944); *MacDonald v. Plymouth County Trust Co.*, 286 U. S. 263, 52 S. Ct. 505 (1932); 2 Collier on Bankruptcy (14th ed.), Sec. 23.08.

There remain the 9 Guaranteed Underliers, to which the Circuit Court below devoted its entire opinion.

B. Jurisdiction over the Properties of the Guaranteed Underliers Is Consonant with Reorganization Law

The Guaranteed Underliers do not possess franchises to operable lines (SMR ¶ 720, R. 772); they haven't the facilities or equipment necessary for street railway service (SMR ¶¶ 834, 836, 848, 859, R. 657, 795, 800); they have no intention to resume public service (SMR ¶¶ 842, 863, 864, 876, R. 797, 801, 802, 803); they could not successfully operate separately even if they tried (SMR ¶ 880, R. 803); they believe a continuation of unitary operation of the whole system is desirable and have no alternative solution to offer (R. 395a-396a). Nevertheless, they point to the fact that they are not affiliated with the Debtor or with Philadelphia Company, and argue that their former lines are not "property of the debtor" and are therefore beyond the federal bankruptcy court's reorganization jurisdiction because under the law of Pennsylvania the 900-year leases under which they ceased operations in 1902 are merely "valid demises of possessory rights" to properties of which they retain the ownership as landlords (Monong. pet., p. 21; see also Phila. Co. pet., pp. 19-20).

Any discussion of the court's power to include the properties of the Guaranteed Underliers in a system-wide reorganization must have reference to the nature of this proceeding and the character of the relief sought. The objective of the City's petition is relatively limited. It does not seek a turn-over order, for all of the system's properties have been in the custody of the court since May 10, 1938. It does not seek to make the assets of one underlier subject to the claims of the creditors of another or of the Debtor; nor does it seek to subordinate the claims of any system creditor or security holder to those of any other.[4] Its only purpose is to make possible a system-wide plan hearing which will bind everyone. The City is not now trying to determine *how* the system shall be reorganized but only that it *shall* be reorganized. The City's petition does not deal with substantive property rights but with matters of jurisdiction. It does not attempt to fix the quantum of each party's interest in the system's properties; the petition asks only for a finding that all parties—including the underliers and their stockholders and creditors—have *an* interest in *all* of the properties rather than the right to repossess any particular portion of such system properties.

A system-wide reorganization in this case, under the control of the court, need not and should not work preferences among the parties having interests in the Debtor and the underliers. Nor need it relegate the underliers' security-holders to the status of creditors of the Debtor or even to

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[4] The City's prayer pointedly requests the court, in exercising jurisdiction over the system properties, to respect the relative rights and equities of the stockholders and creditors of the several underliers (R. 75a).

the status of unsecured creditors of the entire enterprise. The problem of determining an equitable distribution of the Reorganized Company's securities among the stockholders and creditors of the several underliers is complex but could readily be solved.[5] The reorganization may well follow the general theory pursued in the Plan, under which distribution to the underliers' security-holders would be on the basis of the value of each underlier's assets as determined by a reasonable formula.[6] In any event, the segments of the system which, it is argued, are owned severally by the Debtor and the 49 underliers, cannot possibly exceed the value of the entire system; the underliers' opposition to jurisdiction rests therefore, not upon the possible loss of their property, but upon distrust of the court's equitable determination of its value.[1]

The District Court below is a federal reorganization court of broad and far-reaching powers. By statute they include those of a court of equity of receivership as well as

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[5] Cf. R. 961 where the Reorganization Trustee states:

> "If this court holds that title to the properties of the underlying corporation is vested in the Trustees of Pittsburgh Railways Company, Debtor, subject, however, to the claims of the creditors and the interests of the stockholders of the respective underlying corporations, there would appear to be no difficulty involved in providing adequate means for execution of a plan."

[6] See Plan, p. 33 (R. 574).

[1] Of course the *real* reason for the opposition of Philadelphia Co. and of the Guaranteed Underliers is their private battle, to terminate, or to preserve, the lease guaranties (cf. SMR ¶¶ 491, 864, R. 726, 802).

those of a bankruptcy court.[2] Further powers are conferred by the reorganization provisions of the Bankruptcy Act.[3] And, lastly, it is a court of equity, which is empowered to look behind legalistic forms and to deal equitably and realistically with the problems before it.[4]

Even before the enactment of the reorganization statutes the courts never hesitated to assert jurisdiction where the facts warranted it, and ignored the fiction of separate corporate entities in doing so. In equity receivership as well as in bankruptcy the courts have ordered consolidated proceedings for related corporations in order to prevent fraud, protect creditors and subserve the public interest. *In re Eilers Music House*, 270 F. 915 (CCA 9, 1921), cert. den. 257 U. S. 646, 42 S. Ct. 55; *Central Republic Bank and Trust Company v. Caldwell*, 58 F. 2d 721 (CCA 8, 1932); *Stone v. Eacho*, 127 F. 2d 284 (CCA 4, 1942), cert. den. 317 U. S. 635, 63 S. Ct. 54; *In re Rieger, Kapner & Altmark*, 157 F. 609 (D. C. Ohio, 1907); *Commerce Trust Co. v. Woodbury*, 77 F. 2d 478 (CCA 8, 1935), cert. den. 296 U. S. 614, 56 S. Ct.

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[2] Secs. 114, 115 of Chapter X, 11 U. S. C. Secs. 514, 515. Sec. 102 of Chapter X, 11 U. S. C. Sec. 502, makes applicable to reorganizations almost all of the provisions of Chapters I to VII of the Bankruptcy Act, of which Secs. 2 (6), 2 (7) and 2 (15), 11 U. S. C. Secs. 11 (6), 11 (7) and 11 (15) are particularly relevant.

[3] See, e. g., Secs. 203, 212 and 227, 11 U. S. C. Secs. 603, 612 and 627. In addition, Sec. 262 of the Judicial Code (28 U. S. C. Sec. 377), authorizes Federal courts "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdiction, and agreeable to the usages and principles of law."

[4] *Local Loan Co. v. Hunt*, 292 U. S. 234, 54 S. Ct. 695 (1934).

134. The fact that the Guaranteed Underliers, by virtue of continued receipt of lease rentals from Philadelphia Company as guarantor, are not insolvent, is not of itself significant. *Trustees System Co. of Pa. v. Payne,* 65 F. 2d 103 (CCA 3, 1933).

The foregoing cases exemplify the broad powers of the ordinary bankruptcy or equity receivership court. When acting as a reorganization court, its *in rem* jurisdiction is extended to the point where it is practically unlimited. Finletter on Bankruptcy Reorganization (1939) comments as follows (at pp. 142 et seq.):

> "In one important class of cases, where the property interests in an asset are divided, the reorganization court * * * may * * * be said to have complete jurisdiction over the res. This jurisdiction consists not merely of the general right to hear and decide all claims with respect to it, such as arise from the mere possession of property by a court, but is a full one to administer the asset and all rights in it for the purpose of including it in a plan or arrangement. The only limitation of this power is that it must be used 'for the purposes of this chapter'—that is, with the end of an eventual reorganization in view."

In the present case the *res* is the unitary street railway system, which includes the properties of the underliers, and the only purpose of the court's jurisdiction is to effect a reorganization of the enterprise.

In the leading case of *Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. Ry. Co.,* 294 U. S. 648, 55 S. Ct. 595 (1935), this Court expounded the purpose and

effect of reorganization statutes. In upholding the power to control assets of the debtor in the hands of a pledgee, the Court said (292 U. S. at 676, 677):

> "* * * It may be that in an ordinary bankruptcy proceeding the issue of an injunction in the circumstances here presented would not be sustained. As to that it is not necessary to express an opinion. But a proceeding under Section 77 is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile."

It is noteworthy that in that case the court was simply protecting the possibility of a plan. In the present case, the proceedings have advanced to the stage where a carefully prepared system-wide plan has received the approval of the Pennsylvania Public Utility Commission and awaits consideration by the Court and the parties at plan hearings. There is, therefore, far more reason for denying to recalcitrant parties the right to obstruct the reorganization.

A further application of the extended jurisdiction of courts of reorganization is furnished by *In re Prudence-Bonds Corp.*, 77 F. 2d 328 (CCA 2, 1935), cert. den. 296 U. S. 584, 56 S. Ct. 95, where the court restrained indenture trustees from foreclosing, selling or encumbering certain mortgages pledged with them by the debtor. The court explained (p. 330):

> "* * * For the purpose of reorganization, the court should take complete charge of property in order that it may from the beginning, and through all the intermediate steps of reorganization, so administer the property as to achieve the desired rehabilitation."

That property held under long-term lease may, where circumstances warrant, be treated as property of the lessee for purposes of bankruptcy reorganization, was recognized in the case of *In re Hotel Gibson Co.*, 11 F. Supp. 30 (D. C. S. D. Ohio, 1935).

Realistically, the underliers' reversion is a security lien, like that of a mortgagee, rather than a paramount title.[5] The underliers rely on a remote and speculative reversion, to occur nearly a millenium hence,[6] for their contention that they now own public utility properties which for two generations have been integral portions of the Debtor's transportation system. The Circuit Court held properly that

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[5] The reorganization court's power to disturb, and if necessary divest, the lien held by a mortgagee or other secured creditor is specifically granted by Sec. 227 of Chapter X, 11 USCA Sec. 627. See also Secs. 216 (1), 216 (10), 216 (14) and 226 of Chapter X, 11 USCA Secs. 616 (1), 616 (10), 616 (14) and 626.

[6] Cf. opinion of Circuit Court below (R. 951):

> "We are concerned with the realities of the situation, not the least of which is the projection of a trolley transportation system almost a thousand years into a future of revolutionary travel changes in order to substantiate the existence and worth of reversionary fee simple."

As shown below (see quotation *infra*, p. 28), the Pennsylvania Public Utility Commission has forecast a limited remaining life for street railways as a means of urban mass transportation.

these integral portions of the Debtor's system are, under the facts of the case, property of the Debtor for reorganization purposes.

It is true, of course, that in other situations long-term railroad and street railway leases have been given effect as such.[6a] An examination of those decisions reveals, however, that in each case the facts were vastly different from those presented here. In each case there was no doubt that the leased line was separably operable; in several cases the lessor had already repossessed and resumed separate operation of its line. Here, as has been shown, each underlier owns but an inoperable segment of a unified system.

Upon the question of reorganization jurisdiction, *Price v. Gurney*, 324 U. S. 100, 65 S. Ct. 513 (1945), relied upon by the Guaranteed Underliers (Monong. pet., p. 34), is entirely inapplicable to the present case. *Price v. Gurney* involved an effort by stockholders to file a petition for the reorganization of their corporation. They professed to be acting on behalf of the corporation, as in a derivative suit. This Court held that Chapter X did not empower stockholders, who under local law did not have authority to speak for the corporation, to file a petition on its behalf so as to enable the court to acquire original jurisdiction.

[6a] Philadelphia Co. (pet. p. 22) cites: *Palmer v. Connecticut Railway and Lighting Co.*, 311 U. S. 544, 61 S. Ct. 379 (1941); *Thompson v. Texas Mexican Ry. Co.*, 324 U. S. 838, 66 S. Ct. 937 (1946); *Smith v. Hoboken R. R. Warehouse & S. C. Conn. Co.*, U. S. , 66 S. Ct. 947 (1946); *Pennsylvania Steel Co. v. New York City Ry. Co.*, 198 F. 721 (CCA 2, 1912); *American Brake Shoe & Foundry Co. v. New York Railways Co.*, 293 F. 633 (CCA 2, 1923); *In re Chicago Rapid Transit Co.*, 129 F. 2d 1 (CCA 7, 1942).

The question here is not the same. It is rather whether the reorganization court's jurisdiction, which admittedly extends to the Debtor and its property, comprehends all the system's street railway assets, including those claimed by the underliers.

As shown above, the City's petition raises only the issue of bankruptcy jurisdiction and does not affect the parties' substantive property rights; hence the Pennsylvania decisions cited by the petitioners (Monong. pet. pp. 21-22; Phila. Co. pet. pp. 29-20) are irrelevant.[7] The Circuit Court below ruled properly that in determining whether "the sweep of a federal statute" (the Bankruptcy Act) encompasses jurisdiction over underlier properties in the circumstances of this case, the state law is not controlling (R. 948).

The basic question of whether the federal court has jurisdiction under a federal statute is one of federal law. For the purpose of determining such federal jurisdiction, the law of the federal courts controls, and not the law developed under different circumstances and for different purposes by state courts. The purposes of Chapter X, as applied to a large and important utility desperately in need of reorganization, would be frustrated by a federal sub-

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[7] The relative rights and priorities of the stockholders and creditors of the several underliers may be determined by Pennsylvania law. But this is a matter for later consideration, at plan hearings, and does not bear upon the question of bankruptcy jurisdiction. Even under the local law of Pennsylvania, however, it has been held that where, as here, the original properties of lessor street railway companies have been replaced by the lessee operating company, the existing properties belong to the lessee. *In re Philadelphia Rapid Transit Co.*, 16 F. Supp. 941 (D. C. E. D. Pa. 1936).

servience on issues of jurisdiction to title decisions enunciated by state courts.

Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938) (cited in Monong. pet. p. 24) does not apply here. This Court has clearly indicated that the rule of *Erie R. Co. v. Tompkins* is limited to diversity cases, in order that the rights of parties to ordinary controversies shall not be affected simply because a federal instead of a state forum is resorted to. *Guaranty Trust Co. v. York*, 326 U. S. 99, 108, 65 S. Ct. 1464, 1469 (1945). The *Tompkins* rule is not applicable to cases involving the interpretation of federal statutes. *Commissioner of Int. Rev. v. Tower*, U. S. , 66 S. Ct. 532, 536, 90 L. Ed. 599 (1946); *Holmberg v. Armbrecht*, U. S. , 66 S. Ct. 582, 583-584, 90 L. Ed. 590 (1946). Specifically, it is not applicable in the interpretation of the federal Bankruptcy Act. *Heiser v. Woodruff*, U. S. , 66 S. Ct. 853, 855-856, 90 L. Ed. 828 (1946); *American Surety Co. of N. Y. v. Sampsell*, U. S. , 66 S. Ct. 571, 90 L. Ed. 550 (1946). In the latter case this Court held that even though the federal law governing the distribution of the bankrupt's estate should be applied with appropriate regard for rights acquired under rules of state law, "the extent to which state law is to be so considered is in the last analysis a matter of federal law."[8]

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[8] The bankruptcy cases cited by the Guaranteed Underliers (Monong. pet. pp. 23-25) are not inconsistent with this statement.

Holt v. Crucible Steel Co., 224 U. S. 262 (1912) was decided simply by the application of old Section 67 (a) [since amended: 11 U. S. C. Sec. 105 (a)], which then read: "Claims which for want of record or for other reasons would not have been valid liens as

C. The Public Need for Preserving Pittsburgh's Transportation System Justifies Exercise of the Court's Maximum Powers

The Court's power to effect a thoroughgoing and lasting reorganization of Pittsburgh's mass transit system rests, in large measure, upon the paramount public need for the relief sought.

The framers of the reorganization statutes could not anticipate every possible fact situation, such as that presented by the unique record of the present case, but there is no doubt that they intended to empower the courts to meet every contingency of complex modern conditions in order to come to the aid of all enterprises worthy of re-

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against the claims of the creditors of the bankrupt shall not be liens against his estate." *Finn v.* 415 *Fifth Avenue Co.*, 153 F. 2d 501 (CCA 2, 1946), cert. den. 66 S. Ct. 1014, which held that a reorganization trustee is subject to the New York Rent Control Law, turned upon earlier decisions of this Court which made property administered by a bankruptcy trustee subject to general municipal regulation (see p. 503 of 153 F. 2d).

Benedict v. Ratner, 268 U. S. 353 (1925) and *Corn Exchange National Bank & Trust Co. v. Klauder*, 318 U. S. 434 (1943) held that whether a transfer of the bankrupt's property was in fraud of creditors, under Sec. 60 (a) of the Bankruptcy Act, 11 U. S. C. Sec. 96 (a), should be governed by the local law. In the *Klauder* case, where a harsh decision resulted, this Court pointed out (at pp. 438-439 of 318 U. S.) that the Congress, in enacting Sec. 60 (a), had intended to strike down secret assignments. These decisions are consistent with those limiting the effect of the *Erie R. Co. v. Tompkins* rule to diversity cases; in both instances this Court has felt that in determining the effect of commercial dealings, the parties' rights should not be affected by the accident of a federal instead of a state forum.

habilitation. As stated by the court in *Campbell v. Alleghany Corp.*, 75 F. 2d 947 (CCA 4, 1935), cert. den. 296 U. S. 581, 56 S. Ct. 92:

> "The statute is of a remedial character, designated to facilitate the reorganization of corporate business * * * Its purpose should be forwarded by a fair and liberal construction of its provisions, not thwarted by any narrow or technical interpretation, and certainly not by reading into its language conditions and limitations which the lawmakers themselves did not see fit to express." (75 F. 2d 947 at 950)

Under the facts of this unusual case, there is universal agreement upon the need for reorganizing the system as a unit, to the end that a single owning and operating company, conservatively capitalized, may emerge. Any other solution is contrary to public policy, destructive of property values, merely temporary and palliative, and therefore not a feasible alternative to a system-wide reorganization (cf. R. 193a-205a).

The District Court below said (R. 134a):

> "The preservation of this transportation unit appears to be a public necessity in order that adequate transportation at reasonable rates be furnished the public in the City of Pittsburgh and in surrounding areas. The system should be reorganized as a unit if it can be legally done."

The Circuit Court of Appeals below stated (R. 943):

> "There is undoubted need on the part of Pittsburgh and the surrounding country for a unified trans-

portation system. There is a necessity that that transportation system be put on a sound economic basis if it is to continue to do its public work."

The Pennsylvania Public Utility Commission, to which the system-wide plans of reorganization were submitted for approval "as to the public interest therein and the fairness thereof",[9] stated categorically:

> "*The riding public in Pittsburgh and its immediate environs is entitled to a mass transportation system which will give adequate service at reasonable rates.* To this end studies should be made looking to the elimination of duplicate facilities. * * *
>
> "Our experience over a number of years has convinced us that the street car is disappearing as a medium of mass transportation except in the congested parts of a few of our larger cities. We have seen city after city abandon street-car service, in whole or in large part, in favor of either bus service or trackless trolley service. * * *"[10]
>
> "* * * We may add that far from being of the opinion that the reorganized company should confine itself to street railway service, leaving bus service to be performed by several or a number of independent operators, *we think that the public interest would best be served by the reorganized company's conducting all mass transportation service, both street railway and*

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[9] Sec. 178 of Chap. X, 11 U. S. C. sec. 578.

[10] *Re W. D. George, et al., Trustees of Pittsburgh Railways Co.*, 38 P. U. R. (NS) 434, 439, 440 (1940).

bus in the Pittsburgh urban district.'' [1] **(Emphasis supplied)**

The courts have been especially solicitous of the public interest in construing Acts of Congress designed to promote business rehabilitation, industrial peace and the national welfare. Thus, consideration of the public interest has influenced decisions of this Court in interpreting and

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[1] *Re W. D. George, et al., Trustees of Pittsburgh Railways Co.*, 41 P. U. R. (NS) 193, 196 (1941).

The petitioners make a point of the fact that the long-term leases executed by the underliers, and the operation of their lines with others as a general system, were authorized by Pennsylvania statutes (Monong. pet. p. 21; Phila. Co. pet. p. 26). The Guaranteed Underliers then argue (Monong. pet. pp. 25-26) that insofar as the public interest is concerned, the powers of the Commonwealth of Pennsylvania to regulate local transportation, and to control intercorporate relations between companies engaged therein, have been expressed in such statutes and cannot be interfered with by the federal bankruptcy court, citing *Palmer v. Commonwealth of Massachusetts*, 308 U. S. 79, 84 (1939).

What this argument overlooks is the fact that the Pennsylvania statutes and the leases they authorize are themselves subject to the state's sovereign police powers exercisable in the public interest, and that with reference to public utility matters, such paramount police powers have been delegated to the Pennsylvania Public Utility Commission. *City of Scranton v. Public Service Commission*, 268 Pa. 192, 196, 110 A. 761 (1920); Pennsylvania Public Utility Law of 1937, P. L. 1053, Sec. 202, 66 Purdon's Pa. Statutes, Sec. 1122.

We need not speculate what the reaction of the Pennsylvania Public Utility Commission would be to the underliers' contentions in the present case—contentions by companies unable to resume public service that their 900-year leases must be observed to the letter in every particular even if to do so will destroy Pittsburgh's transportation system.

enforcing the Packers and Stockyards Act of 1921, the Railway Labor Act of 1926, and the Emergency Price Control Act of 1942. *U. S. v. Morgan*, 307 U. S. 183, 59 S. Ct. 795 (1938); *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 57 S. Ct. 492 (1937); and *Hecht Co. v. Bowles*, 321 U. S. 321, 64 S. Ct. 587 (1944), respectively.

In the *Morgan* case, *supra*, the Court said: "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and the manner of moulding its remedies, may be affected by the public interest involved" (307 U. S. 183 at 194). In the *Virginian Railway* case, *supra*, the Court explained (at p. 552 of 300 U. S.):

> "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved [citing cases]."

And in the *Hecht Co.* case, *supra*, the Court said that "the standards of the public interest, not the requirements of private litigation, measure the propriety and need for * * * relief in these cases" (at p. 331 of 321 U. S.).

The public interest is here doubly important, for the present case involves not only the interpretation of a Federal statute designed to enable the financial reorganization of corporations, but also its application to a large public service company whose rehabilitation is vitally necessary to the welfare of a metropolitan community.

III.

THE DECISION OF THE COURT BELOW IS COMPATIBLE WITH THE EARLIER DECISION IN PHILADELPHIA COMPANY V. DIPPLE

A controversy involving the Debtor and the underliers came to the attention of this Court and of the Circuit Court below earlier in the present reorganization proceedings: *Philadelphia Co. v. Dipple*, 312 U. S. 168, 61 S. Ct. 538 (1941), affirming 111 F. 2d 932 (CCA 3, 1940).

In that case, this Court and the Circuit Court observed the separate corporate entities of the underliers, whereas in the present case the Circuit Court has disregarded their separate entities. Both decisions, the City submits, are correct and are quite compatible with each other. The *Dipple* case, in the words of the Circuit Court (R. 947) "was concerned with the relations of the various companies in this system with each other". Philadelphia Company, seeking special treatment for the underliers and for itself,[2] sought to have the Trustees of the Debtor pay the underliers' corporate taxes as administration expenses. Since it was uncertain whether the sum due each underlier for the use and occupation of its properties was in excess of that underlier's taxes, both this Court and the Circuit Court denied the relief requested because an illegal preference might result. This Court said:

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[2] As guarantor of the tax obligations of the Guaranteed Underliers: *Monongahela St. Ry. Co. v. Philadelphia Co.*, 350 Pa. 603, 39 A. 2d 909 (1944).

"The underlying companies' relation to the Pittsburgh Railways Company is that of creditor and debtor and no principle of equity justifies ignoring that relation when so to do might adversely affect the claims of other creditors" (at p. 176 of 312 U. S.).

The decision in the *Dipple* case would be the same whether or not jurisdiction over the underliers' properties, as now prayed for by the City, be upheld. For there is no way of telling whether the individual corporate tax obligations of each underlier exceed the value of that underlier's (or of that underlier's stockholders' and creditors') interest in the system. Obviously, no underlier (or its stockholders or creditors) can demand more of the Trustees of the Debtor than its interest in the System is worth. And in any event, when and if any underlier's taxes are paid by the Trustees of the Debtor, the amount so paid will be on account of allowances for use and occupation or in reduction of the value of the underlier's interest in the System, and not as an administration expense.

Moreover, the equities in the *Dipple* case were entirely different from those presented now. In the *Dipple* case, Philadelphia Company, which for its own purposes had nurtured and preserved the separate corporate entities of the underliers, was asking that their entities be disregarded for the purpose of granting a possible preference;[3]

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[3] Indeed, Philadelphia Company was attempting to benefit from a disregard of the separate corporate entities of the underliers while insisting, at the same time, that their separate entities be observed. See change in this Court's opinion, noted at p. 656 of 312 U. S., which was prompted by a letter addressed to Mr. Justice Roberts by counsel for Philadelphia Company (SMR ¶ 802, R. 789).

here, on the other hand, the separate corporate entities of the underliers are being disregarded so that the System's thousands of creditors may receive prompt and equitable relief and, of paramount importance, in order to preserve the transportation system of a large city.

The Circuit Court below properly pointed out that "the corporate fiction can be given effect in some instances and with perfect consistency disregarded in other instances" (R. 949-950). The Circuit Court cited *Irving Trust Co. v. Kaminsky,* 22 F. Supp. 362 (D. C. S. D. N. Y. (1936), which relied upon the decision of this Court in *Corsicana Nat. Bank v. Johnson,* 251 U. S. 68, 88, 89, 40 S. Ct. 82 (1919).

CONCLUSION

The decision of the Circuit Court below correctly applied the law to the unique factual record presented—a record of unexampled physical, corporate and financial confusion among 50 corporations whose properties are involved inextricably in a single public service enterprise. Failure to grant the relief so urgently called for would be a confession of impotence on the part of the federal courts to deal equitably and realistically with a problem which, though unexpected and hence not explicitly covered by statute, was intended by the Congress to be within the jurisdiction of the bankruptcy court to solve.

The Circuit Court's decision does not call for review by this Court. The petitions for certiorari should therefore be denied.

Respectfully submitted,

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